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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF ALAMEDA  
10 UN-LIMITED CIVIL

11 ALICIA CHIN,  
12 Plaintiff,  
13 vs.

14 ACE HARDWARE CORPORATION; HY-  
15 KO PRODUCTS COMPANY.; and  
16 Does 1-30, inclusive  
17 Defendants

Case No.: **17866379**

COMPLAINT FOR INJUNCTIVE RELIEF  
AND CIVIL PENALTIES

Cal. Health & Safety Code §25249.6 *et seq*

18 Plaintiff complains and alleges the following in the public interest of the State of California:

19 INTRODUCTION

20 1. This Complaint is a representative action brought by plaintiff ALICIA CHIN in the  
21 public interest of the citizens of the State of California to enforce the People's right to be  
22 informed about exposures to Di(2-ethylhexyl)phthalate ("DEHP") a toxic chemical that is found  
23 in the Key Topper, Ace Hardware Corporation item # 5087424, & Hy-Ko Products Company  
24 item # 0 29069 75123 4 (Stock # KC135), sold in California.

25 2. By this Complaint, plaintiff seeks to remedy defendants' continuing failure to warn  
26 California citizens about the risks of exposures to the DEHP present in the Key Topper, Ace  
27 Hardware Corporation item # 5087424, & Hy-Ko Products Company item # 0 29069 75123 4  
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BY FAX

1 (Stock # KC135), imported, manufactured, distributed, and offered for sale or use to consumers  
2 throughout the State of California.

3 3. Detectable levels of DEHP is commonly found in the Key Topper, Ace Hardware  
4 Corporation item # 5087424, & Hy-Ko Products Company item # 0 29069 75123 4 (Stock #  
5 KC135), that defendants import, manufacture, distribute, ship, sell and offer for sale to  
6 consumers throughout the State of California.

7 4. Under the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
8 Health & Safety Code §25249.6 et seq. ("Proposition 65"), "[n]o person in the course of doing  
9 business shall knowingly and intentionally expose any individual to a chemical known to the  
10 state to cause cancer or reproductive toxicity without first giving clear and reasonable warning  
11 to such individual . . . ." Health & Safety Code §25249.6.

12 5. Pursuant to Proposition 65, on October 24, 2003, California identified and listed  
13 DEHP as a chemical known to cause birth defects and other reproductive harm. DEHP became  
14 subject to the "clear and reasonable warning" requirements of the act one year later on October  
15 24, 2004. Cal. Code Regs. tit. 27, § 27001(c); Health & Safety Code §§ 25249.8 &  
16 25249.10(b).

17 6. Defendants manufacture, distribute, import, sell, and offer for sale without warning  
18 in California, key toppers, containing DEHP including, but not limited to, the Key Topper, Ace  
19 Hardware Corporation item # 5087424, & Hy-Ko Products Company Item # 0 29069 75123 4  
20 (Stock # KC135). All such key toppers containing DEHP are referred to collectively  
21 hereinafter as the ("PRODUCTS").

22 7. Defendants' failure to warn workers, consumers and other individuals in California  
23 of the harms associated with exposures to DEHP in conjunction with defendants' sales of the  
24 PRODUCTS containing DEHP are violations of Proposition 65, and subject defendants to  
25 enjoinder of such conduct, as well as civil penalties for each violation. Health & Safety Code  
26 §25249.7(a) & (b)(1).  
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1 8. For defendants' violations of Proposition 65, plaintiff seeks preliminary and  
2 permanent injunctive relief to compel defendants to provide purchasers or users of the  
3 PRODUCTS with the required warning regarding the health hazards associated with exposures  
4 to DEHP. Health & Safety Code §25249.7(a).

5 9. Pursuant to Health & Safety Code §25249.7(b), plaintiff also seeks civil penalties  
6 against defendants, and each of them, for each violation of Proposition 65.

7 **PARTIES**

8 10. Plaintiff ALICIA CHIN is a citizen of the State of California who is dedicated to  
9 protecting the health of California citizens through the elimination or reduction of harmful  
10 exposures to toxic chemicals from consumer products. She brings this action in the public  
11 interest pursuant to Health & Safety Code §25249.7(d).

12 11. Defendant ACE HARDWARE CORPORATION ("ACE HARDWARE") is a  
13 person in the course of doing business within the meaning of Health & Safety Code §§25249.6  
14 & 25249.11.

15 12. ACE HARDWARE manufactures, imports, distributes, sells, and/or offers the  
16 PRODUCTS for sale or use in the State of California, or it implies by its conduct that it  
17 manufactures, imports, distributes, sells, and/or offers the PRODUCTS for sale or use in the  
18 State of California.

19 13. Defendant HY-KO PRODUCTS COMPANY ("HY-KO") is a person in the course  
20 of doing business within the meaning of Health & Safety Code §§25249.6 & 25249.11.

21 14. Defendants manufacture, import, distribute, sell, and/or offer the Key Topper,  
22 Ace Hardware item # 5087424, & Hy-Ko item # 0 29069 75123 4 (Stock # KC135) for sale or  
23 use in the State of California, or it implies by its conduct that it manufactures, imports,  
24 distributes, sells, and/or offers the Key Topper, Ace Hardware item # 5087424, & Hy-Ko item #  
25 0 29069 75123 4 (Stock # KC135) for sale or use in the State of California.  
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1           15. Defendants DOES 1-10 ("MANUFACTURER DEFENDANTS") are each a  
2 person in the course of doing business within the meaning of Health & Safety Code §§25249.6  
3 & 25249.11.

4           16. MANUFACTURER DEFENDANTS research, test, design, assemble, fabricate,  
5 and manufacture, or imply by their conduct that they research, test, design, assemble, fabricate,  
6 and manufacture one or more of the PRODUCTS offered for sale or use in the State of  
7 California.

8           17. Defendants DOES 11-20 ("DISTRIBUTOR DEFENDANTS") are each a person  
9 in the course of doing business within the meaning of Health & Safety Code §§25249.6 and  
10 25249.11.

11           18. DISTRIBUTOR DEFENDANTS distribute, exchange, transfer, process, and  
12 transport one or more of the PRODUCTS to individuals, businesses, or retailers for sale or use  
13 in the State of California.

14           19. Defendants DOES 21-30 ("RETAILER DEFENDANTS") are each a person in  
15 the course of doing business within the meaning of Health & Safety Code §§25249.6 and  
16 25249.11.

17           20. RETAILER DEFENDANTS offer the PRODUCTS for sale to individuals in the  
18 State of California.

19           21. At this time, the true names of defendants DOES 1 through 30, inclusive, are  
20 unknown to plaintiff, who, therefore, sues said defendants by their fictitious names pursuant to  
21 Code of Civil Procedure §474. Plaintiff is informed and believes, and on that basis alleges,  
22 that each of the fictitiously named defendants is responsible for the acts and occurrences  
23 alleged herein. When ascertained, their true names shall be reflected in an amended complaint.

24           22. ACE HARDWARE, HY-KO, MANUFACTURER DEFENDANTS,  
25 DISTRIBUTOR DEFENDANTS, and RETAILER DEFENDANTS are hereinafter collectively  
26 referred to as "DEFENDANTS."  
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## VENUE AND JURISDICTION

23. Venue is proper in the County of Alameda, pursuant to Code of Civil Procedure §§393, 395, and 395.5, because this Court is a court of competent jurisdiction, because plaintiff seeks civil penalties against DEFENDANTS, because one or more instances of wrongful conduct occurred, and continue to occur, in this county, and/or because DEFENDANTS conducted, and continue to conduct, business in Alameda with respect to the PRODUCTS.

24. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, section 10, which grants the Superior Court "original jurisdiction in all causes except those given by statute to other trial courts." The statute under which this action is brought does not specify any other basis of subject matter jurisdiction.

25. The California Superior Court has jurisdiction over DEFENDANTS based on plaintiff's information and good faith belief that each defendant is a person, firm, corporation or association that is a citizen of the State of California, has sufficient minimum contacts in the State of California, and/or otherwise purposefully avails itself of the California market. DEFENDANTS' purposeful availment renders the exercise of personal jurisdiction by California courts consistent with traditional notions of fair play and substantial justice.

## FIRST CAUSE OF ACTION

### **(Violation of Proposition 65 - Against All Defendants)**

26. Plaintiff realleges and incorporates by reference, as if fully set forth herein, Paragraphs 1 through 25, inclusive.

27. In enacting Proposition 65, in the preamble to the Safe Drinking Water and Toxic Enforcement Act of 1986, the People of California expressly declared their right "[t]o be informed about exposures to chemicals that cause cancer, birth defects, or other reproductive harm."

28. Proposition 65 states, "[n]o person in the course of doing business shall knowingly and intentionally expose any individual to a chemical known to the state to cause

1 cancer or reproductive toxicity without first giving clear and reasonable warning to such  
2 individual . . . .” Health & Safety Code §25249.6.

3 29. On April 6, 2017, plaintiff’s sixty-day notice of violation, together with the  
4 requisite certificate of merit, was provided to DEFENDANTS, and the requisite public  
5 enforcement agencies stating that, as a result of DEFENDANTS’ sales of the Key Topper, Ace  
6 Hardware item # 5087424, & Hy-Ko item # 0 29069 75123 4 (Stock # KC135), containing  
7 DEHP, workers, consumers and other individuals in the State of California are being exposed  
8 to DEHP resulting from their reasonably foreseeable use of the Key Topper, Ace Hardware  
9 item # 5087424, & Hy-Ko item # 0 29069 75123 4 (Stock # KC135), without the individual  
10 purchasers and users first having received a “clear and reasonable warning” regarding such  
11 toxic exposures, as required by Proposition 65.

12 30. DEFENDANTS have engaged in the manufacture, importation, distribution, sale,  
13 and offering of the Key Topper, Ace Hardware item # 5087424, & Hy-Ko item # 0 29069  
14 75123 4 (Stock # KC135), for sale or use in violation of Health & Safety Code §25249.6, and  
15 DEFENDANTS’ violations have continued to occur beyond their receipt of plaintiff’s sixty-  
16 day notice of violation. As such, DEFENDANTS’ violations are ongoing and continuous in  
17 nature, and, unless enjoined, will continue to occur in the future.

18 31. After receiving plaintiff’s sixty-day notice of violation, to plaintiff’s best  
19 information and belief, the appropriate public enforcement agencies have failed to commence  
20 and diligently prosecute a cause of action against DEFENDANTS under Proposition 65.

21 32. The Key Topper, Ace Hardware item # 5087424, & Hy-Ko item # 0 29069  
22 75123 4 (Stock # KC135), manufactured, imported, distributed, sold, and offered for sale or  
23 use in California by DEFENDANTS contain DEHP in such a way that the reasonably  
24 foreseeable uses of these products result in exposures that require a “clear and reasonable”  
25 warning under Proposition 65.  
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1           33. DEFENDANTS knew or should have known that the Key Topper, Ace  
2 Hardware item # 5087424, & Hy-Ko item # 0 29069 75123 4 (Stock # KC135), they  
3 manufacture, import, distribute, sell, and offer for sale or use in California contain Lead.

4           34. DEHP is present in the Key Topper, Ace Hardware item # 5087424, & Hy-Ko  
5 item # 0 29069 75123 4 (Stock # KC135), in such a way as to expose individuals through  
6 dermal contact and/or ingestion and/or inhalation during reasonably foreseeable use.

7           35. The normal and reasonably foreseeable use of the Key Topper, Ace Hardware  
8 item # 5087424, & Hy-Ko item # 0 29069 75123 4 (Stock # KC135), has caused, and  
9 continues to cause, consumer exposures to DEHP, as such exposures are defined by title 27 of  
10 the California Code of Regulations, §25602(b).

11           36. DEFENDANTS have knowledge that the normal and reasonably foreseeable use  
12 of the Key Topper, Ace Hardware item # 5087424, & Hy-Ko item # 0 29069 75123 4 (Stock #  
13 KC135), exposes individuals to DEHP through dermal contact and/or ingestion and/or  
14 inhalation.

15           37. DEFENDANTS intend for such exposures to DEHP from the reasonably  
16 foreseeable use of the Key Topper, Ace Hardware item # 5087424, & Hy-Ko item # 0 29069  
17 75123 4 (Stock # KC135), to occur by their deliberate, non-accidental participation in the  
18 manufacture, distribution, sale, and offering of the Key Topper, Ace Hardware item # 5087424,  
19 & Hy-Ko item # 0 29069 75123 4 (Stock # KC135), for sale or use to individuals in the State  
20 of California.

21           38. DEFENDANTS failed to provide a "clear and reasonable warning" to those  
22 workers, consumers and other individuals in California who have been, or will be, exposed to  
23 DEHP.

24           39. Contrary to the express policy and statutory prohibition of Proposition 65  
25 enacted directly by California voters, consumers, and other individuals exposed to DEHP  
26 through dermal contact and/or ingestion and/or inhalation, resulting from the reasonably  
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foreseeable use of the Key Topper, Ace Hardware item # 5087424, & Hy-Ko item # 0 29069 75123 4 (Stock # KC135), sold by DEFENDANTS without a "clear and reasonable warning," have suffered, and continue to suffer, irreparable harm for which they have no plain, speedy, or adequate remedy at law.

40. Pursuant to Health & Safety Code §25249.7(b), as a consequence of the above-described acts, DEFENDANTS are liable for a maximum civil penalty of \$2,500 per day for each violation.

41. As a consequence of the above-described acts, Health & Safety Code §25249.7(a) also specifically authorizes the Court to grant injunctive relief against DEFENDANTS.

#### **PRAYER FOR RELIEF**

Wherefore, plaintiff prays for judgment against DEFENDANTS as follows:

A. That the Court, pursuant to Health & Safety Code §25249.7(b), assess civil penalties against DEFENDANTS, and each of them, in the amount of \$2,500 per day for each violation;

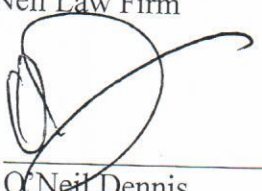
B. That the Court, pursuant to Health & Safety Code §25249.7(a), preliminarily and permanently enjoin DEFENDANTS from manufacturing, distributing, or offering the PRODUCTS for sale or use in California without first providing a "clear and reasonable warning" as defined by title 27 of the California Code of Regulations, §25601 et seq., as to the harms associated with exposures to DEHP;

C. That the Court grant plaintiff her reasonable attorneys' fees and costs of suit; and

D. That the Court grant such other and further relief as may be just and proper.

Date: July 3, 2017

O'Neil Law Firm

By:   
O'Neil Dennis  
Attorney for Alicia Chin